

## **§ 42.11**

defendant's failure to file a timely answer, the Secretary shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Secretary decides that the defendant's failure to file a timely answer is not excused, the Secretary shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

### **§ 42.11 Referral of complaint and answer to the Administrative Law Judge (ALJ).**

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

### **§ 42.12 Notice of hearing.**

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 42.8 of this part. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) The notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and the defendant, if any; and

(6) Other matters the ALJ deems appropriate.

### **§ 42.13 Parties to the hearing.**

(a) The parties to the hearing shall be the defendant and the Department of Veterans Affairs.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

## **38 CFR Ch. I (7–1–05 Edition)**

### **§ 42.14 Separation of functions.**

(a) The investigating official, the reviewing official, and any employee or agent of the Department of Veterans Affairs who takes part in investigating, preparing, or presenting a particular case may not, in the case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Secretary, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to, the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the Department of Veterans Affairs, including in the offices of either the investigating official or the reviewing official.

### **§ 42.15 Ex parte contacts.**

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

### **§ 42.16 Disqualification of reviewing official or ALJ.**

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. The motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) The motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) The affidavit shall state specific facts that support the party's belief